IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 45 OF 2006

1) Nanu Engineers Pvt. Ltd.,
"Nanu House" Varde Valaulikar Road,
Post Box 125,
Margao, Goa.

2) Shri Pravas K. Naik,
Shareholder and Director of the
Petitioner No.1 Company,
Margao, Goa. ..... Petitioners.

V/s.

1. State of Goa,
through its Chief Secretary,
Secretariat,
Panaji, Goa.

2. The Executive Engineer,
Works Division XII (PHE),
Public Works Department,
Sanguem, Goa.

3. The Chief Engineer-I,
Public Works Department,
Government of Goa,
Altinho, Panaji, Goa.

4. The Superintending Engineer,
Circle VI (PHE),
Government of Goa,
Altinho, Panaji, Goa.

5. Kirloskar Brothers Ltd.,
"Chinthan", 408/15,
Mukund Nagar, Pune, 411 037. ..... Respondents.

Mr. A.N.S. Nadkarni and Mr. H.D. Naik, Advocates for the petitioners.

Mr. S. S. Kantak, Advocate General with Ms. Rakhi Chodankar, Addl. Govt. Advocate for respondents No.1 to 4.

Mr. M. S. Usgaonkar, Senior Advocate with Mr. Sudesh Usgaonkar, Advocate for respondent No.5.

CORAM : A.P. LAVANDE &
N.A. BRITTO, JJ.

Date of reserving the Judgment :
2nd May, 2006.

Date of pronouncing the Judgment:
5th June, 2006.

J U D G M E N T : (Per A.P. LAVANDE, J.)

Rule. By consent of parties heard forthwith.

2. By this petition, the petitioners challenge the award of tender for augmentation of Salauli Water Works Phase-I, Electrical-Mechanical supply of 33 KV transformer and vertical turbine pumps by respondent Nos. 1 to 4 to respondent No.5. The petitioners further seek direction against the respondents to award the work under tender in favour of the petitioners.

3. Briefly, the facts which are relevant for the purpose of disposal of the petition, are as under :-

On 2nd March, 2001, respondent No.1 issued Circular according to which the tenders pertaining to the road, buildings, water supply and sewage works quoting more than 20 % below

the estimated cost put to the tender were to be rejected. The said Circular states that the same was issued in order to maintain proper quality of works. On 7.6.2005, respondent No.1 issued another Circular withdrawing the Circular dated 2.3.2001. On 13.6.2005, respondent No.2 issued a notice inviting tender for augmentation of Salauli Water Works Phase-I, Electrical-Mechanical supply of 33 KV transformer and vertical turbine pumps. In terms of the said notice, estimated cost of the work was Rs.2,58,82,793/-. Thereafter, on 6.7.2005 respondent No.2 issued Corrigendum reducing the estimated cost to Rs.2,48,23,500/-. On 27.6.2005, respondent No.2 issued another Corrigendum extending the date of receipt of sealed tender by 24.8.2005 upto 15.00 hours instead of 9.8.2005 as stipulated in the original notice. On 12.8.2005, respondent No.3 issued Circular stating that the Government of Goa had decided that tenders pertaining to roads, buildings, water supply and sewerage works quoted more than 20 % below the estimated cost put to tender should be rejected. Respondent No.2 opened technical bids on 24.8.2005. Thereafter, by communication dated 17.11.2005, respondent No.2 informed petitioner No.1 that based on the scrutiny of technical bids, it was decided as follows :

(1)Period for completion of work has to be considered as 240 days as against the 120 days stipulated in the tender documents.

(2) As regards to items No.5 and 6 of the schedule, cable voltage shall be read as “3.3 KV” as against 33 KV.

(3)Copper loss in the transformer shall be 34 KW as against the stipulated 35 KW earlier stipulated.

Petitioner No.1 was asked to modify financial offer in consideration of the above, in case petitioner No.1 so desired and submit the same on or before 15.00 hours on 29.11.2005. By another communication dated 25.11.2005, respondent No.2 requested petitioner No.1 to extend the validity of above tender for further period of three months from 25.11.2005 till 28.02.2006. On 28.11.2005, petitioner No.1 submitted revised financial bid in an envelope and requested respondent No.2 to treat the old price bid as cancelled and not to open the same. Petitioner No.1 also extended the validity of the tender as requested to 28.2.2006. On 29.11.2005, the financial bids of four tenderers were opened and they are as follows :

(a) Kirloskar Brothers (respondent No.5)	Rs.1,75,00,000/-
(b) Nanu Engineers Pvt. Ltd., (Petitioner No.1)	Rs.1,98,58,800/-
(c) Friends Engineering	Rs.1,98,58,800/-
(d) Allied Electro Mechanical (P) Ltd.	Rs.2,01,46,594/-

4. On 10.12.2005, the petitioners addressed a letter to

respondent No.2 pointing out that respondent No.5 had quoted more than 20 % below the estimated cost put to tender and as such, the tender of respondent No.5 should be rejected. Again, on 20.12.2005 the petitioners made another representation to respondent No.2 pointing out the Government Circular and that acceptance of the tender of respondent No.5 would be in breach of the said Circular.

5. On 21.12.2005, the petitioners made similar representation to respondent No.3 pointing out that respondent No.2 had flouted the Government Circular. By letter dated 2.1.2006, respondent No.2 informed the petitioners to approach respondent No.3 since respondent No.3 was the accepting authority. In the meantime, the petitioners learnt of the decision to award the work to respondent No.5 and, therefore, by communication dated 6.1.2006 requested respondent No.3 to furnish the copy of the decision taken in the matter of tender and further requested not to issue any work order. On 10.1.2006, the petitioners filed Writ Petition in this Court, challenging the decision of respondent Nos. 1 to 4. The said writ petition was disposed of on 13.1.2006 upon statement being made on behalf of the Government that till that date no decision was taken as regards the acceptance or the refusal of the tenders. On the very

day, the petitioners addressed a letter to respondent No.3 pointing out the Government Circular dated 12.8.2005 and that because of the said Circular, the petitioners had quoted the price exactly 20 % below the estimated cost since the petitioners apprehended that the petitioners might be disqualified if the price is more than 20 % below the estimated costs. The petitioners further mentioned that in case the respondent Nos. 1 to 4 were of the opinion that the Circular dated 12.8.2005 was not applicable, the petitioners should be given an opportunity to give better competitive offer than that of respondent No.5. Since the petitioners received no reply, the representative of the petitioner visited the office of respondent No.2 whereupon he came to know that lowest offer of respondent No.5 had been accepted by respondents No.1 to 4. Thereafter, the present petition was filed on 10.2.2006 and on 13.2.2006 this Court passed an order of status quo.

6. On behalf of respondents No.1 to 4 Shri J.S.S. Rego, Chief Engineer-I, PWD, has filed affidavit opposing the petition. It is the case of respondents No.1 to 4 that in respect of the works proposed to be undertaken in terms of notice inviting tender there are no rates prescribed in the Goa Schedule of Rates. Ordinarily, estimates of any work which is put to tender are based on the Goa Schedule of Rates. Since, there were no rates prescribed in respect

of the proposed works, the department invited quotations from reputed dealers in the field, namely M/s. Electro Mechano Enterprises and Electro Engineering Enterprises in respect of transformers and Vertical Turbine Pumps and in respect of filter beds, quotations were invited from Candy Filters (Bombay) Limited, Cristal Filters and M/s. Geo Millers and Company Private Limited, New Delhi. The quotation received from Electro Engineering Enterprises in respect of supply of transformers and vertical turbine pumps was the lowest at Rs.2,48,23,500/- and therefore, it was decided to consider this amount as the estimated cost in the notice inviting Tender. It is further the case of respondent Nos.1 to 4 that petitioner No.1 was earlier known as "Electro Engineering Enterprise". Pursuant to tender notice dated 13.6.2005, four tenderers submitted bids – technical bid and financial bid. They are as follows:

(a) M/s. Nanu Engineering Private Limited.

(b) M/s. Friends Engineering Company.

(c) Allied Electro Mechanical (P) Ltd.

(d) Kirloskar Brothers Limited.

On 24.8.2005, technical bids of all tenderers were found in order. After opening the technical bids and considering the suggestions made by the tenderers, it was decided to make some modifications which have been already mentioned above.

Consequently, the tenderers were asked to submit fresh financial bids on or before 29.11.2005 and the offer made by respondent no.5 at Rs.1,75,00,000/- was the lowest. The applicability of the Circular dated 12.8.2005 raised by the petitioners was considered by the Government and it was decided that the Circular was not applicable since the works were of electrical and mechanical nature and further that the Circular was applicable only when the estimated cost was based on Goa Schedule of Rates. It was also noted that the petitioners in their quotation which was the basis for fixing the estimated cost, had submitted inflated market rate. Therefore, in public interest the Government decided to accept the tender of respondent No.5. The Government also considered that respondent No.5 is a Company of repute and are leading manufacturers of the items put to tender. Since the offer made by respondent No.5 was in the best interest of the Government, the same was accepted and the Work Order was issued to respondent No.5. In short, it is the case of the Government that the Circular dated 12.8.2005 is not applicable since the estimated cost is not based on Goa Schedule of Rates.

7. On behalf of respondent No.5, Shri Gurunath Palekar has filed his affidavit. It is the case of respondent No.5 that since the estimated cost was not based on Goa Schedule of Rates, the

Circular dated 12.8.2005 is not applicable. It is further the case of respondent NO.5 that since the notice inviting tender was published on 13.6.2005, the Circular dated 12.8.2005 which is administrative in nature and issued later on, cannot be enforced by the petitioners.

8. Mr. Nadkarni, learned Counsel appearing for the petitioners assailed the award of tender to respondent No.5 mainly on two grounds. Firstly, on the ground that the Circular dated 12.8.2005 is attracted in respect of the tender awarded to respondent No.5 and since the amount quoted by respondent No.5 is more than 20 % below the estimated cost, the award of tender to respondent No.5 is vitiated and secondly on the ground that if respondent Nos. 1 to 4 were to hold that the Circular dated 12.8.2005 was not applicable in respect of the tender, the petitioners ought to have been given an opportunity to give better competitive offer than that of respondent No.5. Mr. Nadkarni submitted that neither in Circular dated 2nd March, 2001 nor in Circular dated 12.8.2005, there is any reference to Goa Schedule of Rates, but the reference is only to estimated cost and as such, the stand of the respondents that the said Circular applies only when the estimated cost is based on Goa Schedule of Rates, has absolutely no basis. Relying upon an unreported Judgment of this

Court dated 22nd April, 2003 in Writ Petition No.290/2002 (**Capital Controls India Pvt. Ltd. Vs. State of Goa and others),** Mr. Nadkarni submitted that in the said Judgment statement was made on behalf of the Government of Goa that the Circular dated 2nd March, 2001 was applicable in respect of all works and therefore, the Government now cannot turn around and say that the Circular dated 12.8.2005 is applicable only in respect of the works for which the estimated cost is based on Goa Schedule of Rates. The Judgment in the case of **Capital Controls India Pvt. Ltd., (supra)** is squarely applicable in the present case and therefore, the award of tender to respondent No.5 is vitiated. The learned Counsel further submitted that the stand of respondent Nos.1 to 4 that the Circular dated 12.8.2005 is not attracted in the present case is coming up for the first time in the affidavit filed in this petition on behalf of respondent Nos. 1 to 4. According to learned Counsel, the decision to award the tender to respondent No.5 is not based on relevant consideration, but on the contrary it is vitiated on account of Circular dated 12.8.2005 which is clearly applicable in the present case. Mr. Nadkarni further submitted that even if it is held that the Circular dated 12.8.2005 is not applicable in the present case, still the award of tender to respondent No.5 is vitiated on account of the fact that although by communication dated 13.1.2006 the petitioners had requested

respondent No.3 to give them an opportunity to give better competitive Offer than that of respondent No.5 in the event respondent Nos. 1 to 4 were to hold that the said Circular was not applicable, respondents No.1 to 4 did not give an opportunity to give better offer which the petitioners would have given. In support of his submissions, Mr. Nadkarni relied upon the following authorities :

(1)AIR 1989 SC 1642 (**Dwarkadas Marfatia and Sons vs. Board of Trustees of the Port of Bombay);**

(2)(1974) 2 SCR 348 **(**E.P. Royappa Vs. State of Tamil Nadu);

(3)(AIR 1978 SC 597) Maneka Gandhi V. Union of India;

(4)AIR 1979 SC 1628 (R.D. Shetty vs. International Airport Authority of India);

(5)(1980) 3 SCR 1338 (Kasturi Lal Lakshmi Reddy vs. State of J & K.)

(6)AIR 1981 SC 487 (Ajay Hasia vs. Khalid Mujib Sehravardi);

(7)AIR 1990 SC 1031 (Mahabir Auto Store and ors. vs. Indian Oil Corporation and ors.)

(8)AIR 1977 SC 1496 (M/s. Radhakrishna Agrawa1 v. State of Bihar).

(9)AIR 1975 SC 266 (Erusion Equipment and Chemicals Lt. vs. State of West Bengal).

(10)1993 AIR SCW 1509 (Food Corporation of India vs. M/s. Kamdenu Cattle Feed Industries).

(11)AIR 1993 SCW 683 (United India Periodicals Pvt. Ltd., vs. M & N Publications Limited).

(12)AIR 1985 SC 1147 (Ram & Shyam Company vs. State of Haryana).

9. Mr. Kantak, learned Advocate General appearing on behalf of respondent Nos. 1 to 4 submitted that the Circular dated 12.8.2005 is not applicable since the said Circular is applicable only when the estimated cost is based on Goa Schedule of Rates. According to the learned Advocate General, the ratio of the Judgment in Capital Controls India (supra) is not applicable in the present case since the work involved was undertaken by Water Supply Department, whereas in the present case, the work involved is of electro mechanical nature. He further submitted that in the said Judgment the applicability of the Circular dated 2nd March, 2001 was not in issue and therefore, the said Judgment does not advance the case of the petitioners any further. According to the learned Advocate General, there are no allegations of malafides personally against any individual and therefore, the only issue before the Court is whether public interest is going to suffer by awarding the tender to respondent No.5. According to

him, it is not the case of the petitioners that by awarding the tender to respondent No.5 for the amount quoted, the work is going to be of substandard nature and, therefore, there is no public interest involved in the petition filed by the petitioners, but it is a pure case of claim for allotment of tender by the petitioners vis-a-vis the respondent No.5. According to the learned Advocate General, the award of tender to respondent No.5 for Rs.1,75,00,000/- which is below the amount quoted by the petitioners, cannot be said to be against the public interest. He further submitted that the action of the petitioners at the time of submitting revised finance bid in asking the respondents not to open his initial financial bid raises serious doubt that the initial bid submitted by the petitioners was not based on the Circular dated 12.8.2005. He further submitted that the submission made on behalf of the petitioners that they ought to have been given opportunity by the respondents No.1 to 4 to give better offer in the event they were to hold that the Circular dated 12.8.2005 was not applicable in the present case, is without any legal basis. According to the learned Advocate General, there is neither illegality or arbitrariness in the award of the tender to respondent No.5 inasmuch as admittedly, respondent No.5 is the lowest tenderer. In support of his submissions, the learned Advocate General relied upon the following Judgments :

(1)(1999) 1 SCC 492 (Raunaq International Ltd. vs. I.V.R. Construction Ltd. and ors.);

(2) (2005) 11 SCC 45 (M.P. Gopalakrishnan Nair and anr. vs. State of Kerala and ors.);

(3) (2005) 6 SCC 404 (ICICI Bank and anr. vs. Municipal Corpn. of Greater Bombay and ors.);

(4) (2000) 2 SCC 617 (AIR India Ltd. vs. Cochin International Airport Ltd. and ors.);

(5)AIR 1996 SC 11 (Tata Cellular vs. Union of India).

(6)AIR 2005 SC 2299 (M/s. Master Marine Services Pvt. Ltd., V. Metcalfe & Hodgkinson Pvt. Ltd. and anr.).

10. Mr. Usgaonkar, learned Senior Counsel appearing for respondent No.5 submitted that the petitioners having participated in tender process are not entitled to challenge the award of tender to respondent No.5 on the ground that the Circular dated 12.8.2005 is attracted in the present case. According to learned Senior Counsel, the petitioners were very much aware of the Circular dated 7.6.2005 and they submitted their tender on the basis of the said Circular. According to the learned Counsel, an adverse inference has to be drawn against the petitioners on account of the fact that the petitioners by the letter dated 28.11.2005 called upon the respondents not to open their initial

financial bid. According to learned Counsel, this was because the petitioners had not submitted their initial financial bid on the basis of Circular dated 12.8.2005. It was submitted that in the present case, Circular dated 7th June, 2005 was applicable to the tender, in question, and therefore, respondents No.1 to 4 were not entitled to rely upon the Circular dated 12.8.2005. According to the learned Counsel, there was no question of giving opportunity to the petitioners to give better competitive offer in the event respondents No.1 to 4 were to hold that the Circular dated 12.8.2005 was not applicable. Lastly, he submitted that the award of tender to respondent No.5 is in public interest since, admittedly, the offer given by respondent No.5 is the lowest and, therefore, no interference is called for against the award of tender to respondent No.5. In support of his submissions, the learned Senior Counsel relied upon the following Judgments :

(1)AIR 1989 SC 230; (M/s. Shree Ganesh Steel Rolling Mills and anr. vs. Union of India and ors.);

(2) (1990) 3 ALL E R (Blackpool and Fylde Aero Club Lt vs. Blackpool Borough Council.

11. We have considered the submissions made by the learned Counsel appearing for the parties and perused the Judgments relied upon by them.

12. In view of the rival submissions, the following points arise for our consideration :

(1)Whether the Circular dated 12.8.2005 is applicable to the tender in question ?

(2)Whether the respondent Nos. 1 to 4 ought to have given an opportunity to the petitioner to offer better competitive rate in the event they were of the opinion that the Circular dated 12.8.2005 was not applicable ?

13. In view of Mr. Nadkarni's submission that the judgment of this Court in the case of **Capital Controls India Pvt. Ltd. (supra)** is squarely applicable in the present case, it would be appropriate to deal with this submission first. In the said case, tender issued by respondent No.2 to respondent No.4 was challenged on the ground that although the offer of the petitioner was the lowest, the tender was allotted to respondent No.4 on the ground that the petitioner's bid was less than the estimated cost by more than 20 % and secondly on the ground that the petitioner's bid was conditional one. The work involved in the said tender was of supply, installation, testing and commissioning of an Electrochlorination System at Curti Treatment Plant of Opa Water

Works. It is the case of the respondents that the work involved in the said tender was different from one involved in the present case. In the present case, the work is of electro mechanical nature. It is also the case of the respondents that the applicability of the said Circular dated 2nd March, 2001 which is almost similar to Circular dated 12th August, 2005, was not in issue and, therefore, the reliance placed by the petitioners on the said Judgment is misplaced. Mr. Kantak, learned Advocate General is justified in placing reliance on the Judgment of the Apex Court in the case of **ICICI Bank and another** (supra). The decision of the Apex Court in the case of **M.P. Gopalakrishnan Nair and anr.** (supra) to contend that the decision is an authority of what it decides and not what can logically be deducted therefrom and the observations in a Judgment should not be read as a ratio. Therefore, we are unable to accept the submission of Mr. Nadkarni that the present case is squarely covered by the Judgment of this Court in the case of **Capital Controls India Pvt. Ltd**. (supra). The main question arises for determination is whether the Circular dated 12.8.2005 is applicable to the tender in question. The said Circular reads as under :

> "No.PWD/SSW/F.85/1/(Tech)/200
> 5-06/625
> Government of Goa,
> Office of the Suptdg. Surveyor of Works,
> Public Works Department,

Altinho, Panaji-Goa.

Date : 12/8/2005.

C I R C U L A R

In continuation to Order No. PWD/SSW/F.200/1/(Tech)/2005-06/237 dt. 7/6/2005, now it has been decided by the Government that tenders pertaining to Roads, Buildings, Water Supply & Sewerage Works quoted more than 20 % below the estimated cost put to tender should be rejected.

All the Superintending Engineers/Executive Engineers, P.W.D. should therefore strictly comply with the above instructions forthwith.

This will come in force with immediate effect.

Sd/-
(K.P. Nambiar)
PRINCIPAL CHIEF ENGINEER
P.W.D.

Authorised to issued
Sd/-
(J.N. Chamulkar)
Suptdg. Surveyor of Works
P.W.D.

Copy to :
1. The Secretary (PWD), Secretariat, Porvorim, Goa
2. The Principal Chief Engineer, P.W.D., Altinho-Panaji.
3. The Chief Engineer, I & II, P.W.D., Altinho-Panaji.
4. O.S.D. to the Minister to PWD, Secretariat, Panaji-Goa.
5. Office of the Suptdg. Surveyor of Works, PW.D., Altinho-Panaji.
6. The Superintending Engineer, Circle I to IX, P.W.D., Altinho-Panaji."

It is the case of respondents No.1 to 4 that the said Circular is applicable only when the estimated cost is worked out on the basis of Goa Schedule of Rates and since in the present matter the

estimated cost is not based on Goa Scheduled of Rates, the Circular dated 12.8.2005 is not applicable. It is further the case of respondents No.1 to 4 that admittedly the respondent No.5 is the lowest tenderer and it is not the case of the petitioners themselves that by awarding tender to respondent No.5 for the amount quoted, the work is going to be of substandard nature. But, on the contrary, it is the case of the petitioners that they ought to have been given an opportunity to give better competitive offer. The stand taken by respondents No.1 to 4 that the Circular dated 12.8.2005 is applicable only when the estimated cost is based on Goa Schedule of Rates cannot be said to be illegal, more particularly having regard to the fact that the estimated cost was based on the quotation given by M/s. Electro Mechano Enterprises in which name petitioner No.1 was earlier known. Therefore, having regard to the nature of the work in respect of which tender was floated by respondents No.1 to 4, it cannot be said that the Circular dated 12.8.2005 was applicable and, therefore, the tender submitted by respondent No.5 could not have been accepted by respondents No.1 to 4.

14. In the case of **Raunaq International Ltd**. (supra), it was observed that the award of contract, whether by a private party or by a pubic body or the State, is essentially a commercial

transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial consideration which would include, inter alia, (1) the price at which the other side is willing to do the work; (2) whether the goods or services offered are of the requisite specifications; and (3) whether the person tendering has the ability to deliver the goods or services as per specifications.

15. In the case of United India Pvt. Ltd (supra), the Apex Court held that while exercising power of judicial review in respect of contract entered into on behalf of the State, the Court is concerned mainly whether "decision making process" was reasonable, rational and not arbitrary and violative of Article 14 of the Constitution and the Court cannot act as an appellate authority by substituting its opinion in respect of selection made for entering into such contract.

16. In the case of AIR India Ltd. (supra), the Apex Court held that even when some defect is found in the decision making process, the Court must exercise its discretionary power under Article 226 of Constitution with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the

larger public interest in mind in order to decide whether its intervention is called for or not and only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene.

17. In the case of M/s. Master Marine Services Pvt. Ltd. (supra), the Apex Court set aside the Judgment of the High Court awarding tender to respondent No.1 for Rs.3.75 per container as against Rs.3.00 per container of the appellant therein on the ground that there was no public interest involved warranting interference by the High Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution while undertaking judicial review of administrative act relating to award of the contract.

18. In the present case, we have already held that the stand of respondent Nos. 1 to 4 that the Circular dated 12.8.2005 is not applicable cannot be said to be illegal. Once we accept this position, the necessary sequitur is that respondent Nos. 1 to 4 were justified in accept the tender of respondent No.5 whose offer was admittedly lower than the offer made by petitioner No.1. That being the position, the action of respondents No.1 to 4 in awarding tender to respondent No.5 cannot be said to be arbitrary

or illegal warranting interference by this Court by exercising jurisdiction under Article 226 of the Constitution. What follows from the catena of decisions relied upon on behalf of the petitioners is that the action of the State while entering into contractual obligation should not be arbitrary, fanciful but it must be in the public interest. In the present case, upon appreciation of the material placed by the parties, we have no hesitation to hold that the action of respondent Nos. 1 to 4 in awarding tender is neither arbitrary nor illegal. The decision has been taken after considering the commercial interest of the State and therefore, this is not a case in which the award of tender to respondent No.5 can be termed as against the public interest. On the contrary, the award of tender to respondent No.5 which is admittedly the lowest tenderer subserves the public interest and therefore, the ratio of the judgments quoted above by the learned Advocate General is squarely applicable in the present case.

19. In so far as the second submission made by Mr. Nadkarni that respondents No.1 to 4 ought to have given an opportunity to the petitioners to give better competitive offer if they were of the opinion that the Circular dated 12.8.2005 was not applicable is concerned, we do not find any merit in the said submission. The action of the respondents No.1 to 4 in accepting the tender of

respondent No.5 whose offer was admittedly lowest cannot be faulted and there is no requirement in law which mandates the Government to call upon unsuccessful tenderer to give better competitive offer to compete with the successful tenderer. Mr. Nadkarni has not cited any authority in support of his submission that respondents No.1 to 4 ought to have given the petitioners opportunity to give better competitive offer in the event they were of the opinion that the Circular dated 12.8.2005 was not applicable.

20. In so far as the submission made on behalf of the respondent Nos. 1 to 4 that adverse inference has to be drawn against the petitioners in view of the fact that at the time of submission of the revised financial bid, the petitioners asked respondents No.1 to 4 not to open his initial financial bid is concerned, we are unable to accept the submission. Once the revised financial bid was called for by respondents No.1 to 4, the initial financial bid offered by the petitioner No.1 was totally irrelevant. Therefore, no adverse inference can be drawn against the petitioners merely on the ground that they asked respondents No.1 to 4 not to open the initial financial bid after revised financial bid was submitted.

21. In view of the above discussion, we do not find any merit in this petition. Consequently, the petition stands dismissed. Interim Order dated 13th February, 2006 passed by this Court stands vacated. Having regard to the facts and circumstances of the case, the parties are directed to bear their own costs.

A.P. LAVANDE, J.

N. A. BRITTO, J.

ssm.